

AMENDED IN ASSEMBLY APRIL 17, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 632**

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**Introduced by Assembly Member Salas**

February 21, 2007

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An act to amend Section 1278.5 of the Health and Safety Code, relating to health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 632, as amended, Salas. Health care facilities: whistleblower protections.

Existing law provides for the licensure and regulation of health care facilities, as defined, by the State Department of Public Health. Under existing law, a health facility is prohibited from retaliating or discriminating against an employee of a health facility that has presented or initiated a complaint or initiated, participated, or cooperated in, an investigation or proceeding of a government entity relating to the care, services, or conditions of the facility. Existing law makes the violation of these provisions a crime and subject to the assessment of a civil penalty.

This bill would additionally prohibit a health facility, ~~or its affiliate,~~ from retaliating or discriminating against a physician and surgeon on its medical staff ~~or on the medical staff of its affiliate~~ who has complained of the care, services, or conditions of the health facility ~~or its affiliate~~ or assisted, as specified, a governmental agency in the investigation of those matters, *and would also prohibit the entity that owns or operates the facility and any other facility owned or operated by that entity from retaliating or discriminating against the physician and surgeon because of taking those actions.*

Because the bill would expand the conduct subject to criminal prosecution by extending the whistleblower protection to a physician and surgeon, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1278.5 of the Health and Safety Code is  
2 amended to read:

3 1278.5. (a) The Legislature finds and declares that it is the  
4 public policy of the State of California to encourage patients,  
5 nurses, physicians and surgeons, and other health care workers to  
6 notify government entities of suspected unsafe patient care and  
7 conditions. The Legislature encourages this reporting in order to  
8 protect patients and in order to assist those government entities  
9 charged with ensuring that health care is safe. The Legislature  
10 finds and declares that whistleblower protections apply primarily  
11 to issues relating to the care, services, and conditions of a facility  
12 and are not intended to conflict with existing provisions in state  
13 and federal law relating to employee and employer relations.

14 (b) (1) No health facility shall discriminate or retaliate in any  
15 manner against any patient or employee of the health facility  
16 because that patient, employee, or any other person has presented  
17 a grievance or complaint, or has initiated, participated, or  
18 cooperated in an investigation or proceeding of any governmental  
19 entity, relating to the care, services, or conditions of that facility.  
20 No health facility ~~or its affiliate~~ shall discriminate or retaliate in  
21 any manner against a physician and surgeon ~~on the medical staff~~  
22 ~~of the health facility or its affiliate because the~~ *its medical staff*  
23 *because the* physician and surgeon has presented a grievance or  
24 complaint, or has initiated, participated, or cooperated in an  
25 investigation or proceeding of any governmental entity, relating  
26 to the care, services, or conditions of the facility ~~or its affiliate,~~  
27 *nor shall the entity that owns or operates the health facility or any*

1 *other health facility that is owned or operated by that entity*  
2 *discriminate or retaliate against the physician and surgeon for*  
3 *taking those actions with respect to the facility where he or she is*  
4 *a member of the medical staff.*

5 ~~(2) A health facility or its affiliate that violates this section shall~~

6 (2) *A violation of this section shall* be subject to a civil penalty  
7 of not more than twenty-five thousand dollars (\$25,000). The civil  
8 penalty shall be assessed and recovered through the same  
9 administrative process set forth in Chapter 2.4 (commencing with  
10 Section 1417) for long-term health care facilities.

11 (c) Any type of discriminatory treatment of a patient by whom,  
12 or upon whose behalf, a grievance or complaint has been submitted,  
13 directly or indirectly, to a governmental entity or received by a  
14 health facility administrator within 180 days of the filing of the  
15 grievance or complaint, shall raise a rebuttable presumption that  
16 the action was taken by the health facility in retaliation for the  
17 filing of the grievance or complaint.

18 (d) Any discriminatory treatment of an employee or of a  
19 physician and surgeon who has presented a grievance or complaint  
20 *to the health facility, peer review body, or any other agency or*  
21 *entity responsible for reviewing health care quality, or who* has  
22 initiated, participated, or cooperated in an investigation or  
23 proceeding of any governmental entity as specified in subdivision  
24 (b), if the health facility had knowledge of the initiation,  
25 participation, or cooperation by the employee or by the physician  
26 and surgeon, shall raise a rebuttable presumption that the  
27 discriminatory action was taken by the health facility in retaliation,  
28 if the discriminatory action occurs within 120 days of the filing of  
29 the grievance or complaint. For purposes of this section,  
30 “discriminatory treatment of an employee or of a physician and  
31 surgeon” shall include discharge, demotion, suspension, any other  
32 unfavorable changes in the terms or conditions of employment or  
33 of the privileges of the physician and surgeon at the health facility  
34 ~~or its affiliate~~, or the threat of any of these actions.

35 (e) The presumptions in subdivisions (c) and (d) shall be  
36 presumptions affecting the burden of producing evidence as  
37 provided in Section 603 of the Evidence Code.

38 (f) Any person who willfully violates this section is guilty of a  
39 misdemeanor punishable by a fine of not more than twenty  
40 thousand dollars (\$20,000).

(g) An employee who has been discriminated against in employment pursuant to this section shall be entitled to reinstatement, reimbursement for lost wages and work benefits caused by the acts of the employer, and the legal costs associated with pursuing the case. A physician and surgeon who has been discriminated against pursuant to this section shall be entitled to reinstatement, reimbursement for lost income resulting from any change in the terms or conditions of his or her privileges caused by the acts of the facility or ~~its affiliate~~ *the entity that owns or operates a health facility or any other health facility that is owned or operated by that entity*, and the legal costs associated with pursuing the case.

~~(h) For purposes of this section, "affiliate" means a health facility that is directly or indirectly, through one or more intermediaries, controlled by another health facility.~~

~~(i)~~  
(h) This section shall not apply to an inmate of a correctional facility or juvenile facility of the Department of Corrections and Rehabilitation, or to an inmate housed in a local detention facility including a county jail or a juvenile hall, juvenile camp, or other juvenile detention facility.

~~(j)~~  
(i) This section shall not apply to a health facility that is a long-term health care facility, as defined in Section 1418. A health facility that is a long-term health care facility shall remain subject to Section 1432.

~~(k)~~  
(j) Nothing in this section abrogates or limits any other theory of liability or remedy otherwise available at law.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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